Public Version

BEFORE THE
UNITED STATES TRADE REPRESENTATIVE

IN THE MATTER OF:	)	Investigation No. TA-201-73
Certain Steel	)	

WRITTEN COMMENTS OF

INDUSTRIA GALVANIZADORA S.A. DE C.V.
("INGASA")

REGARDING:

CORROSION-RESISTANT STEEL AND CBERA AND DEVELOPING COUNTRY EXCLUSIONS

POTENTIAL ACTION UNDER SECTION 203 OF THE TRADE ACT OF 1974 WITH REGARD TO IMPORTS OF CERTAIN STEEL

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INDUSTRIA GALVANIZADORA S.A. DE C.V.: USTR REMEDY BRIEF

I. INTRODUCTION

Industria Galvanizadora S.A. de C.V. ("INGASA") respectfully submits the following brief with respect to the Presidential phase of the Steel Section 201 action. INGASA's arguments pertain to corrosion-resistant steel, which was investigated by the U.S. International Trade Commission ("Commission") and for which the Commission made injury findings and issued remedy recommendations.

INGASA respectfully submits that the President should exclude Guatemalan imports of corrosion-resistant steel from any remedy he imposes for one of two reasons. First, Guatemala is a beneficiary country under the Caribbean Basin Economic Recovery Act (CBERA), which entitles it to preferential consideration by the President. Thus, in accordance with the statutory intent of the CBERA and based on the established practice with respect to the CBERA, the President should exclude imports from CBERA beneficiary countries because these imports are not substantial. In the alternative, Guatemala is a developing WTO member country and its imports are negligible. Therefore, imports of corrosion-resistant steel from Guatemala should be excluded as negligible under Article 9.1 of the WTO Agreement on Safeguards.

II. THE PRESIDENT SHOULD EXCLUDE GUATEMALAN IMPORTS OF CORROSION-RESISTANT STEEL BECAUSE IT IS A CBERA BENEFICIARY COUNTRY OF THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT (CBERA)

A. The Statute Supports The Exclusion Of Guatemalan Imports Of Corrosion-Resistant Steel

Congress enacted the Caribbean Basin Economic Recovery Act (CBERA) in 1983 and it took effect August 5, 1983.[1] The CBERA eliminates, or in some cases reduces, tariffs on eligible products of designated Caribbean, Central American, and South American countries and territories. The CBERA was intended to address "both emergency problems and long-range economic development."[2] The "centerpiece" of CBERA was "the offer of one-way free trade under Title I of the legislation, providing the most favorable and secure long-term access possible to the U.S. market."[3] The Commission describes the "primary goal" of CBERA as "to promote export-oriented growth in the Caribbean Basin countries and to diversify their economies away from traditional agricultural products and raw materials."[4]

The CBERA provides that:

> In any report by the International Trade Commission to the President under [19 U.S.C. § 2252(f)] regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this chapter, the Commission shall state whether and to

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1 Public Law 98-67, Title II, §§ 211-216, 97 Stat. 384 (19 U.S.C. §§ 2701-2706).

2 H. R. Rep. No. 98-120 (1983), 3, 1983 U.S.C.C.A.N. 643, 644.

3 *See id.*

4 *Caribbean Basic Economic Recovery Act, Andean Trade Preference Act: Impact on the United States*, USITC Publication 3132, September 1998, xiii.

> what extent its findings and recommendations apply to such article when imported from beneficiary countries.[5]

In commenting on this and other provisions of 19 U.S.C. 2703(e), the House Ways and Means Committee stated in its report on the legislation that the standard import relief measures under section 201 would be available with respect to CBERA imports, with certain modifications specified under section [19 U.S.C. § 2703(e)]."[6] The Committee continued:

> Section 103(e) [19 U.S.C. § 2703(e)] is designed to provide domestic industry and labor the standard avenues for obtaining safeguard measures against injurious imports while providing more secure preferential duty-free access to the U.S. market for imports from CBI beneficiary countries than exists under present law.[7]

The legislative history makes it clear that although Congress provided the standard avenues for section 201 actions, CBERA countries were to be "more secure" from section 201 measures than they were under "present law" (*i.e.*, the law in effect prior to enactment of the CBERA). Thus, the intent of Congress as demonstrated by the statutory language and the legislative history supports exclusion of imports from CBERA beneficiary countries.

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[5] 19 U.S.C. § 2703(e)(2). Note that 19 U.S.C. 2252(f) applies to the report by the Commission to the President on the investigation.

[6] H. R. Rep. No. 98-120 (1983), 18, 1983 U.S.C.C.A.N. 643, 659, emphasis added.

[7] *See id.* (emphasis added).

B. The Commission Has Recommended That The President Exclude CBERA Countries From The Remedy

The Commission has followed Congress' intent in regard to CBERA and has recommended to the President that he exclude from any remedy the imports of CBERA beneficiary countries. The Commission majority stated:

> The Commission further recommends that none of the additional tariffs or tariff-rate quotas apply to imports from Israel, or to any imports entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.[8]

The Commission majority based its recommendation not to include the CBERA countries in any remedy action for flat-rolled products on the fact that "[t]he only imports of certain carbon flat-rolled steel during the period of investigation from these countries were small and sporadic.[9]

Additionally, two Commissioners that did not join the majority remedy recommendations also recommended that the President exclude CBERA countries from any remedy on corrosion-resistant steel. Thus, five of six Commissioners in this investigation recommended that the President not include CBERA beneficiary countries in any remedy on corrosion resistant steel. Accordingly, the President should adopt this recommendation and exclude CBERA beneficiary countries from his remedy.

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[8] Determination and Views of the Commission, *Steel*, Inv. No. TA-201-73, USITC Pub. No 3479 (December 2001) at 8 ("Commission Opinion").

[9] Commission Opinion at 382 (citing C.R. and P.R. at Tables E-1, E-2, and E-3) (emphasis added).

C. Imports From CBERA Beneficiary Countries Should Be Excluded From The President's Remedy Because They Are Not Substantial

1. The President Has An Established Practice Of Excluding Imports From CBERA Countries When They Are Not Substantial

The President has an established practice in section 201investigations of excluding CBERA countries when imports from those countries are not substantial. Only in the *Broom Corn Brooms* and the *Certain Steel Wire Rod* cases did the President choose not to exclude imports from CBERA beneficiary countries. In these two cases imports from CBERA beneficiary countries were a substantial share of imports of total imports. In *Broom Corn Brooms*, CBERA beneficiary countries (Panama and Honduras) accounted for between 20% and 43% of all U.S. imports during each year of the period of investigation.[10] In *Certain Steel Wire Rod*, a CBERA country (Trinidad and Tobago) accounted for between 10% and 13% of all U.S. imports during each year of the period of investigation and was the second largest country exporter over the entire period of investigation.[11] In all other section 201 investigations resulting in an affirmative decision since 1990, the President has excluded CBERA beneficiary countries from the import relief action on the basis that imports from such countries were not substantial.[12]

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[10] *Broom Corn Brooms*, Investigations Nos. TA-201-65 and NAFTA 302-1, USITC Publication 2984, August 1996, II-17.

[11] *Certain Steel Wire Rod*, Investigation No. TA-201-69, USITC Publication 3207, July 1999, II-14, II-15.

[12] *See Report to the President on Investigation No. TA-201-63; Extruded Rubber Thread*, 58 Fed. Reg. 4717 (Jan. 15, 1993); *Wheat Gluten*, Investigation No. TA-201-67, USITC Publication 3088, March 1998, I-3, I-29; *Lamb Meat*, Investigation No. TA-201-68, USITC

(continued...)

2. In This Case, Imports From CBERA Beneficiary Countries Are Not Substantial

As the Commission stated in its opinion, imports of steel from CBERA beneficiary countries during the POI were "small and sporadic." Imports of corrosion-resistant steel from CBERA beneficiary countries did not exceed 0.25% in any of the years between 1996 and 2000.[13] If the determination is based on imports of all flat products on which the Commission made an affirmative injury determination or was evenly divided, imports from CBERA beneficiary countries did not exceed 0.03% in any of the years between 1996 and 2000.[14] If the determination is based on imports of all products on which the Commission made an affirmative injury determination or was evenly divided, imports from CBERA beneficiary countries did not exceed 0.06% in any of the years between 1996 and 2000.[15] In fact, imports from CBERA beneficiary countries of virtually all of the products on which the Commission made an affirmative recommendation or was evenly divided are well below 0.5% and most are less than 0.1%.[16]

Clearly, when imports from CBERA beneficiary countries are so insignificant, the interest Congress specified in "providing more secure preferential duty-free access to the U.S. markets for

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(...continued)

Publication 3176, April 1999, C-6; *Circular Welded Carbon Quality Line Pipe*, Investigation No. TA-201-70, USITC Publication 3261, December 1999, I-4, I-83.

13 Commission Report (public) at Table E-2, Import data from ITC DATAWEB.

14 *See id.*

15 *See id.*

16 *See id.* The exceptions are Rebar in interim 2001, in which the percentage of U.S. imports from CBERA beneficiary countries was 1.20%, and stainless bar in 1997 in which the percentage of U.S. imports from CBERA beneficiary countries was 1.45%

imports from CBI beneficiary countries"[17] outweighs any slight protection against CBERA imports that including CBERA countries in the remedy could possibly give. Thus, the President should exclude imports from CBERA countries because they are not substantial.

III. IN THE ALTERNATIVE, THE PRESIDENT SHOULD EXCLUDE GUATEMALAN IMPORTS OF CORROSION RESISTANT STEEL BECAUSE THEY ARE NEGLIGIBLE UNDER ARTICLE 9.1 OF THE WTO AGREEMENT ON SAFEGUARDS

Even if the President finds that it is not appropriate to exclude imports from CBERA beneficiary countries from his remedy, he must exclude Guatemalan imports of corrosion-resistant steel under Article 9.1 of the WTO Agreement on Safeguards because Guatemala is a WTO developing country member and its volume of imports is negligible.

A. The United States Has A Clear Obligation To Exclude All Imports From Developing Countries That Meet The Requirements Of Article 9.1 Of The Agreement On Safeguards

Article 9.1 of the Agreement on Safeguards clearly delineates the obligations of all World Trade Organization ("WTO") members. The Article 9.1 states:

> Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 percent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.[18]

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[17] H.R. Rep. No. 98-120 (1983), 18, 1983 U.S.C.C.A.N. 643, 659.

[18] WTO Agreement on Safeguards Article 9.1 (emphasis added).

Thus, as a WTO member, Article 9.1 of the Safeguards Agreement is an unambiguous international commitment of the United States. The United States has acknowledged its Article 9.1 obligation in several post-WTO safeguard investigations. For example, in the 1996 safeguard investigation of broom corn brooms, the President applied increased duties on imports from all countries except "Canada and Israel and developing countries that account for less than three percent of the relevant imports over a recent representative period."[19] In the 1998 safeguard investigation against wheat gluten, the President applied quantitative limitations on imports from all countries "except for products of Canada, Mexico, Israel, beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) and the Andean Trade Preference Act (ATPA), and other developing countries that have accounted for a minor share of wheat gluten imports."[20]

The United States also has acknowledged its Article 9.1 obligation before the WTO. In the recent *Wheat Gluten* WTO Dispute Settlement Panel proceeding, the United States relied upon the Article 9.1 exclusion in an attempt to justify its treatment of Canada in the Wheat Gluten section 201 investigation.[21] The United States argued that the scope of imports to which a

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19 Proclamation 6961 of November 28, 1996: To Facilitate Positive Adjustment to Competition From Imports of Broom Corn Brooms.

20 Proclamation 7103 of May 30, 1998: To Facilitate Positive Adjustment to Competition From Imports of Wheat Gluten By The President of the United States of America.

21 "The United States relies on Article 9.1 of the *Agreement on Safeguards* in support of its argument that the scope of the serious injury investigation need not correspond exactly to the scope of application of a safeguard measure." Appellate Body Report, *Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, ST/DS166/AB/R, adopted Dec. 22, 2000, footnote 96) (emphasis added).

safeguard remedy is applied generally need not be equivalent to the scope of imports subject to a safeguard investigation. The Panel and Appellate Body disagreed, ruling that, as a general matter, the scope of imports investigated must be equivalent to the scope of imports to which a remedy is applied. Both the Panel and Appellate Body pointed to Article 9.1 as the one exception to this requirement of "symmetry." Thus, the obligation to exclude developing countries from safeguard measures was undisputed and explicitly acknowledged by the United States.

B. Application Of Article 9.1 Of The WTO Safeguards Agreement Shows Imports Of Corrosion-Resistant Steel From Guatemala Should Be Excluded From The Remedy

Application of the President's obligation to exclude developing WTO member countries that are negligible demonstrates that imports from Guatemala should be excluded from the remedy. As discussed in detail above, the United States has an obligation not to impose the remedy on a developing country WTO member if "its share of imports . . . does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned."[22]

Imports of corrosion-resistant sheet from Guatemala should be excluded from the remedy because Guatemala's share of corrosion-resistant sheet imports is less than 3 percent of total imports and developing country Members with less than 3 percent of corrosion resistant sheet imports together account for less than 9 percent of total imports. During the interim period, Guatemala's import share was 0.20 percent. As shown below, the total for all WTO developing countries under 3 percent was 6.12 percent.

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[22] Article 9.1 *WTO Safeguards Agreement*

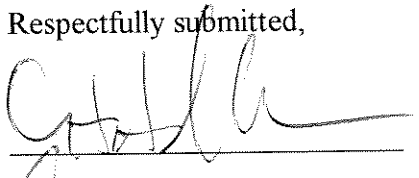
Jan-June '01		
Corrosion-Resistant Sheet	**Share**	**Short Tons**
Antigua Barbuda	0.00%	0
Brazil	1.35%	13,273
Bulgaria	0.00%	0
Chile	0.00%	0
Colombia	0.04%	377
Costa Rica	0.00%	0
Dominican Rep	0.00%	38
Guatemala	0.20%	1,935
Hungary	0.00%	0
India	2.11%	20,761
Indonesia	0.58%	5,684
Latvia	0.00%	0
Peru	0.00%	0
Philippines	0.00%	0
Poland	0.00%	0
Slovakia	0.02%	196
South Africa	0.77%	7,548
Thailand	0.36%	3,533
Trin & Tobago	0.00%	0
Tunisia	0.00%	0
Turkey	0.00%	18
Venezuela	0.69%	6,811
Total	**6.12%**	**60,174**
	Total (World)	**982,714**

Thus, in accordance with the United States' international obligation, the President must exclude Guatemalan imports of corrosion resistant steel from any remedy action because they are negligible.

IV. CONCLUSION

Based on the foregoing, INGASA respectfully submits that the President should exclude Guatemalan imports of corrosion-resistant steel from any remedy he imposes for one of two reasons. First, Guatemala is a beneficiary country under the Caribbean Basin Economic Recovery Act (CBERA), which entitles it to preferential consideration by the President. In accordance with the statutory language and the legislative history and based on established practice, the President should exclude CBERA imports because these imports are not substantial. In the alternative, Guatemala is a developing WTO member country and its imports are negligible. Therefore, imports of corrosion-resistant steel from Guatemala should be excluded as negligible under Article 9.1 of the WTO Agreement on Safeguards.

Respectfully submitted,



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